

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SAMUEL RETH,)	
)	
Plaintiff,)	
)	
v.)	No. 10 C 1001
)	
UNITED STATES OF AMERICA,)	
etc.,)	
)	
Defendant.)	

MEMORANDUM ORDER

This Federal Tort Claims Act action has now generated the United States' Answer to the Amended Complaint ("AC") filed against it by Samuel Reth. For the most part that responsive pleading is refreshingly open--instead of the most-often-encountered package of total denials by a defendant that don't give a real sense of what matters are actually at issue, many of the AC's allegations are admitted on information and belief, and Answer ¶17 actually admits that some aspects of the conduct by the government's postal employee constituted negligence on his part.

There is, however, one problematic aspect of the Answer. Answer ¶¶14, 15 and 18 do not track the disclaimer required for the United States to get the benefit of a deemed denial of certain AC allegations--see Fed. R. Civ. P. 8(b)(5) and App'x ¶1 to State Farm Mut. Auto. Ins. Co. v. Riley, 199 F.R.D. 276, 278 (N.D. Ill. 2001). And beyond that, the attempted disclaimers are followed by "and therefore denies same." That is of course

oxymoronic--how can a party that asserts (presumably in good faith) that it lacks even enough information to form a belief as to the truth of an allegation then proceed to deny it in accordance with Rule 11(b)?

Accordingly the government is ordered to amend those three paragraphs of the Answer (not to file a full-blown Amended Answer) on or before August 23, 2010.

A handwritten signature in black ink, reading "Milton I. Shadur". The signature is written in a cursive, flowing style.

Milton I. Shadur
Senior United States District Judge

Date: August 12, 2010